

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

JADE PIG VENTURES – EGR, LLC,

Plaintiff,

v.

ATHLETA LLC,

Defendant.

CASE NO. 20-cv-00664

JUDGE

**DEFENDANT ATHLETA LLC’S
NOTICE OF REMOVAL**

Removed from the 17th Circuit Court,
Kent County, Case No. 20-04417-
CBB, Judge T.J. Ackert

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Athleta LLC (“Athleta”), expressly reserving all questions other than that of removal, hereby removes the above-captioned action from the 17th Circuit Court, Kent County, Michigan to the United States District Court for the Western District of Michigan, and in support thereof states as follows:

1. On July 1, 2020, Plaintiff Jade Pig Ventures – EGR, LLC (“Jade Pig”) filed a Complaint against Athleta in the 17th Circuit Court, Kent County, Case No. 20-04417-CBB (the “Lawsuit”). On July 7, 2020, Athleta received the Summons and Complaint. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons and Complaint received by Athleta in the Lawsuit are attached hereto and incorporated herein as **Exhibit A**.

2. Removal is proper under 28 U.S.C. §§ 1441(a) and 1332 because Jade Pig and Athleta are citizens of different States and the amount in controversy of the Lawsuit is in excess of \$75,000.00, exclusive of interest and costs.

3. Jade Pig alleges a claim for breach of contract against Athleta for unpaid rent on the premises located at 2213 Wealthy Street SE, Suite 100, East Grand Rapids, Michigan 49506 (the “Premises”). Jade Pig’s breach of contract claim centers upon a written Lease dated August 30, 2017 (the “Lease”).

4. This Court has jurisdiction over this Lawsuit pursuant to 28 U.S.C. §§ 1332(a) and 1441(b) because there is complete diversity of citizenship between Jade Pig and Athleta and the amount in controversy exceeds \$75,000.00.

I. DIVERSITY OF CITIZENSHIP

5. Where an action involves a limited liability company, like this Lawsuit, such company is considered a citizen of every jurisdiction of which any member is a citizen. *Delay v. Rosenthal Collins Grp., LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009).

6. Upon information and belief, and based upon other court filings, the members of Jade Pig are Scott D. Wierda (“Wierda”), an individual who resides in Michigan, and/or Brian G. DeVries (“DeVries”), an individual who resides in Michigan. Wierda and DeVries are citizens of Michigan and, therefore, Jade Pig is a citizen of Michigan.

7. Athleta is a Delaware limited liability company with its principal place of business in San Francisco, California. Athleta's sole member, The Gap, Inc. ("Gap"), is a Delaware corporation with its principal place of business in San Francisco, California. Gap is a citizen of Delaware and California and, therefore, Athleta is a citizen of Delaware and California.

8. Accordingly, for removal purposes, Jade Pig is a citizen of Michigan, and Athleta is a citizen of Delaware and California. The parties therefore are completely diverse and were so at the time the Lawsuit was filed.

II. AMOUNT IN CONTROVERSY

9. In the Lawsuit, Jade Pig alleges that Athleta owes base rent in the amount of \$6,549.00 per month.

10. Jade Pig alleges that Athleta is currently in arrears in the amount of \$30,421.33, for at least the months of April, May, and June 2020, and will continue to accrue monthly until this lawsuit is resolved. Jade Pig also alleges that it is entitled to recover enforcement costs, including its attorneys' fees and expenses. Jade Pig's claim for damages is open ended and exceeds the amounts past due stated in the Complaint. Here, Jade Pig's alleged damages continue to accrue because Athleta continues to not pay rent as it becomes due. Therefore, the amount in controversy at least \$75,000.

11. The jurisdictional requirement under 28 U.S.C. § 1332(a) is satisfied.

III. TIMELINESS OF REMOVAL

12. Athleta received a copy of the Summons and Complaint in the Lawsuit on July 7, 2020.

13. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within thirty (30) days of Athleta's notice and receipt of Jade Pig's Complaint.

IV. VENUE IS PROPER

14. The Lawsuit was filed in the 17th Circuit Court, Kent County, Michigan and, therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1441(a), and 1446.

V. NOTICE TO PLAINTIFF AND THE STATE COURT

15. Contemporaneously with the filing of this Notice of Removal, and pursuant to 28 U.S.C. § 1446(d), written notice of this filing and any attendant supplementary papers required by this Court will be provided to Jade Pig, and a copy of the Notice of Removal will be filed with the 17th Circuit Court, Kent County, Michigan.

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Athleta, LLC hereby removes this action from the 17th Circuit Court, Kent County, Michigan to the United States District Court for the Western District of Michigan, and requests that this action proceed as properly removed to this Court.

Respectfully submitted,

/s/ Timothy J. Lowe
MCDONALD HOPKINS, PLC
Timothy J. Lowe (P68669)
Mark W. Steiner (P78817)
39533 Woodward Avenue, Suite 318
Bloomfield Hills, MI 48304
(248) 646-5070
tlowe@mcdonaldhopkins.com
msteiner@mcdonaldhopkins.com

MICHAEL GEIBELSON (admission pending)
DANIEL ALLENDER (admission pending)
ROBINS KAPLAN LLP
2049 Century Park East
Suite 3400
Los Angeles, California 90067
Phone: 310.552.0130
Fax: 310.229.5800
Email: mgiebelson@robinskaplan.com
dallender@robinskaplan.com

Counsel for Defendant
Athleta LLC

CERTIFICATE OF SERVICE

I certify that on July 20, 2020, I electronically filed the foregoing Notice of Removal with the Clerk of the Court using the E-Filing System which will send notification of such filing to all counsel of record.

By: /s/ Timothy J. Lowe
Timothy J. Lowe (P68669)

Exhibit A

Approved, SCAO

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 17th JUDICIAL CIRCUIT COUNTY PROBATE		SUMMONS	CASE NO. 20-44417 -CBK
Court address 180 Ottawa Ave, NW, Grand Rapids, MI 49503		Court telephone no. (616) 632-5220	
Plaintiff's name(s), address(es), and telephone no(s). Jade Pig Ventures - EGR, LLC 2249 Wealthy Street, SE Suite 240 East Grand Rapids, MI 49506 (616) 774-4444		Defendant's name(s), address(es), and telephone no(s). Athleta LLC Resident Agent: The Corporation Company 40600 Ann Arbor Rd E Ste 201 Plymouth, MI 48170 (888) 724-9870	
Plaintiff's attorney, bar no., address, and telephone no. Christopher J. Zdarsky (P81809) 300 Ottawa Ave, NW Suite 400 Grand Rapids, MI 49503 (616) 649-1974		T.J. ACKERT (P-37123)	

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☒ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date JUL 01 2020	Expiration date SEP 30 2020	Court clerk LISA POSTHUMUS LYONS
----------------------------------	---------------------------------------	--

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

SUMMONS

Case No. _____

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____

List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Signature: _____
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

_____ on _____
 Day, date, time

Signature _____ on behalf of _____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

JADE PIG VENTURES – EGR, LLC,

Plaintiff,

Case No. 20-04417 -CB B

vs.

Hon.

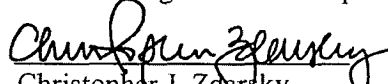
ATHLETA LLC,

T.J. ACKERT
(P-37123)

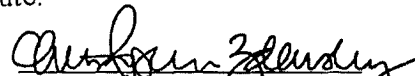
Defendant.

Christopher J. Zdarsky (P81809)
Jason R. Abel (P70408)
Honigman LLP
300 Ottawa Avenue NW, Suite 400
Grand Rapids, MI 49503-2308
616.649.1974
Attorneys for Plaintiff

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this complaint.


Christopher J. Zdarsky

This case does meet the statutory requirements to be assigned to the business court as a part of this action involves a business or commercial dispute.


Christopher J. Zdarsky

COMPLAINT

Plaintiff Jade Pig Ventures – EGR, LLC (“**Landlord**”), by its attorneys, Honigman LLP, for its Complaint against Defendant Athleta LLC (“**Tenant**”), states as follows:

1. This action arises from Tenant’s failure to pay \$30,421.33 due and owing on a Lease (the “**Lease**”), dated August 30, 2017 between the parties. Tenant has a copy of the Lease in its possession, custody, and control.

2. The property subject to the Lease is located at 2213 Wealthy Street SE, Suite 100, East Grand Rapids, MI 495056 (the “**Leasehold**”).

PARTIES, JURISDICTION, AND VENUE

3. Landlord is a Michigan limited liability company conducting business in the State of Michigan.

4. Tenant is a Delaware limited liability company conducting business in the State of Michigan, including Kent County.

4. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds \$25,000, exclusive of interest, costs, and attorneys' fees.

5. Venue is proper in this Court as, among other things, Tenant conducts business in Kent County, Michigan.

**COUNT I
BREACH OF CONTRACT**

6. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 5.

7. Landlord and Tenant are parties to the Lease, which is an enforceable contract.

8. Pursuant to the Lease, Tenant is required to pay to Landlord \$6,549 per month in base rent, plus other required payments, as well as interest, late fees, and Landlord's expenses in conjunction with enforcing the Lease, including its attorneys' fees (collectively, the "Rent").

9. Tenant has defaulted under the Lease by failing to pay Rent for at least the months of April, May and June, 2020 as set forth in the schedule attached as Exhibit A.

10. Landlord sent Tenant a notice of its default on April 20, 2020 (the "Default Notice"). A copy of the Default Notice is attached as Exhibit B.

11. Landlord also sent Tenant a Demand for Possession on May 20, 2020.

12. Pursuant to Section 23.1 of the Lease, Tenant had 10 days to cure this default.

13. Tenant failed to timely cure its default following receipt of the Default Notice and is in breach of its obligations under the Lease.

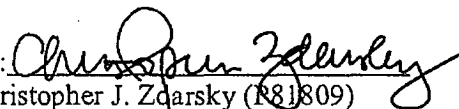
14. Pursuant to Section 28.13 of the Lease, the prevailing party in litigation arising from enforcement of the Lease is entitled to its "costs of suit and reasonable attorneys' fees."

15. As a direct and proximate result of Tenant's breach of the Lease, Landlord has been damaged in amount to be determined at trial, but which should exceed \$30,421.33, and will continue to increase as Tenant fails to meet its contractual obligations.

WHEREFORE, Landlord respectfully requests that this Court:

- (i) Enter judgment in Landlord's favor and against Tenant in amount to be determined at trial, but which is at least \$30,421.33, and which should also include any additional amounts that come due under the Lease together with Landlord's enforcement costs, including its attorneys' fees and expenses; and
- (ii) Award such other relief as the Court deems appropriate.

HONIGMAN LLP
Attorneys for Plaintiff

By: 
Christopher J. Zdarsky (R81809)
Jason R. Abel (P70408)
Honigman LLP
300 Ottawa Avenue NW, Suite 400
Grand Rapids, MI 49503-2308
616.649.1974

Dated: June 19, 2020

Exhibit A

6/15/2020 2:52 PM

**Jade Pig Ventures - EGR, LLC
 Athleta, LLC #4596 (t0003012)
 Account Statement
 6/15/2020**

Date	Description	Charge	Payment	Net Due	Balance
12/31/2019	2019 Tax Rec	-342.12	0.00	-342.12	-342.12
12/31/2019	2019 CAM Rec	725.42	0.00	725.42	383.30
4/1/2020	Recovery - operating (04/2020)	919.91	0.00	919.91	1,303.21
4/1/2020	Recovery - property taxes (04/2020)	2,341.63	0.00	2,341.63	3,644.84
4/1/2020	Retail rent (04/2020)	6,549.00	0.00	6,549.00	10,193.84
4/12/2020	April Late fee income	100.00	0.00	100.00	10,293.84
5/1/2020	Recovery - operating (05/2020)	919.91	0.00	919.91	11,213.75
5/1/2020	Recovery - property taxes (05/2020)	2,341.63	0.00	2,341.63	13,555.38
5/1/2020	Retail rent (05/2020)	6,549.00	0.00	6,549.00	20,104.38
5/1/2020	Adjustment to Monthly CAM (Jan - May)	186.17	0.00	186.17	20,290.55
5/1/2020	Adjustment to Monthly Tax (Jan - May)	195.05	0.00	195.05	20,485.60
5/12/2020	May late fee income	100.00	0.00	100.00	20,585.60
5/26/2020	Overpayment on account	0.00	151.05	-151.05	20,434.55
6/1/2020	Recovery - operating (06/2020)	957.14	0.00	957.14	21,391.69
6/1/2020	Recovery - property taxes (06/2020)	2,380.64	0.00	2,380.64	23,772.33
6/1/2020	Retail rent (06/2020)	6,549.00	0.00	6,549.00	30,321.33
6/12/2020	Late fee income	100.00	0.00	100.00	30,421.33

Exhibit B



April 20, 2020

Athleta LLC
c/o The Gap, Inc.
2 Folsom Street
San Francisco, CA 94105
Attn: Real Estate Law, Store #4596

Re: Lease dated August 30, 2017 (the "Lease"), by and between Jade Pig Ventures – EGR, LLC, a Michigan limited liability company ("Landlord"), and Athleta LLC, a Delaware limited liability company ("Tenant"), for premises located at 2213 Wealthy Street SE, Suite #100, East Grand Rapids, MI 49506 (the "Premises").

NOTICE OF DEFAULT

Dear Sir or Madam:

Reference is made to the above-captioned Lease.

This letter is to inform Tenant that Tenant is in default of its obligations under Section 23.1 of the Lease for failure to pay rents. As of the date of this letter, the outstanding amount due is \$9,810.54.

In the event this default is not cured within ten (10) days after Tenant's receipt of this Notice of Default, Landlord may exercise, and reserves the continuing right to exercise, any or all of its rights and remedies provided by the Lease, including, without limitation, any right to collect late fees and default interest provided for in the Lease, and the right to initiate an action to collect any unpaid amounts due under the Lease and/or to initiate summary proceedings to recover possession of the Premises. Furthermore, please note that certain rights are available to Tenant under the Lease only if Tenant is not then in default and/or has not previously been in default. Your failure to cure this default timely may result in the loss of certain rights under the Lease.

If you have any questions, please contact Cullen Hillary at chillary@cwdrealestate.com.

Very truly yours,

Jade Pig Ventures – EGR, LLC

A handwritten signature in black ink, appearing to read 'C-Hillary', written over the printed name 'Cullen Hillary'.

Cullen Hillary
Vice President of Operations



April 20, 2020

Athleta LLC
c/o The Gap, Inc.
2 Folsom Street
San Francisco, CA 94105
Attn: Real Estate Law, Store #4596

Re: Lease dated August 30, 2017 (the "Lease"), by and between Jade Pig Ventures – EGR, LLC, a Michigan limited liability company ("Landlord"), and Athleta LLC, a Delaware limited liability company ("Tenant"), for premises located at 2213 Wealthy Street SE, Suite #100, East Grand Rapids, MI 49506 (the "Premises").

Dear Sir or Madam:

Reference is made to the above-captioned Lease. Reference is also made to a Notice of Default dated April 20, 2020.

Landlord is in receipt of your letter dated March 19, 2020 requesting certain concessions under your Lease. In order to evaluate your request, please provide Landlord with the financial information described on Exhibit A attached hereto. Once Landlord has received the requested information, it will evaluate your request and notify you whether Landlord will agree to any concession. Any concession is subject to Landlord's lender's consent.

This letter in no way amends the Lease and is not a commitment by Landlord to grant any concessions under the Lease. This letter is not a waiver or retraction of the above-referenced Notice of Default. Landlord may exercise, and reserves the continuing right to exercise, any or all of its rights and remedies provided by the Lease, including, without limitation, any right to collect late fees and default interest provided for in the Lease, and the right to initiate an action to collect any unpaid amounts due under the Lease and/or initiate summary proceedings to recover possession of the Premises.

If you have any questions, please contact Cullen Hillary at chillary@cwdrealestate.com.

Very truly yours,

Jade Pig Ventures – EGR, LLC

A handwritten signature in black ink, appearing to read 'Cullen Hillary'.

Cullen Hillary
Vice President of Operations



EXHIBIT A

Financial Information

[Gross Sales for the past 12 calendar months]

[Tenant balance sheets for year end 2019 and current]

[Tenant income statements for the last two years and year-to-date]

[Tenant current 2020 budget]

[For any guarantor: most recent financial statement]